

AGREEMENT

WHEREAS, the Boston Redevelopment Authority has entered into a contract with the United States Department of Housing and Urban Development providing for financial assistance to the Authority under Title I of the Housing Act of 1949, as amended; and

WHEREAS, the Trustees of Church Realty Trust, Boston, Massachusetts, hereinafter in Section 101 more particularly defined, are the owners of certain land located within the Fenway Urban Renewal Area; and

WHEREAS, Section 403 of the Fenway Urban Renewal Plan provides that certain portions of said land will not be acquired by the Authority if the owner or owners of said land, within one year of the date of a loan and grant contract between the Authority and the United States, submits to the Authority a written proposal satisfactory to the Authority for the comprehensive redevelopment of all of the land within such parcels, and the Authority has extended the expiration date of such period to March 1, 1969; and

WHEREAS, said Trustees intend to lease said land for redevelopment in accordance with the Plan, and the parties hereto desire to stipulate as to the nature and sequence of definite proposals for such redevelopment in order to permit orderly improvement of said land; and whereas Section 403 of the Fenway Urban Renewal Plan requires the execution of a contract with the Authority governing the redevelopment of the land referred to in this Agreement;

NOW, THEREFORE, the parties hereto have mutually agreed as follows:

#### ARTICLE I

##### DEFINITIONS

##### Section 101: Defined Terms

For the purposes of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

- (a) "City" shall mean the City of Boston, Massachusetts.
- (b) "Authority" shall mean the Boston Redevelopment Authority, a public body, politic and corporate, created pursuant to Chapter 121, Section 26QQ of the Massachusetts General Laws (Ter.Ed.), as amended, and shall include any successor in interest, whether by act of a party of this Agreement or by operation of law or otherwise.
- (c) "Trustees" shall mean Roy Garrett Watson, Lincoln Alvord, and George H. G. Caulton and their successors as Trustees of Church Realty Trust under Deed of Trust dated May 2, 1946, recorded with Suffolk Deeds, Book 6223, Page 545, and having a place of business in the City of Boston, Commonwealth of Massachusetts.



- (d) "Property" shall mean Parcels 2, 3, 5, 6, 7, 9, and 11 of the Fenway Urban Renewal Project Area as described in the Fenway Urban Renewal Plan, a copy of which, as amended to the date hereof, is attached hereto and made a part hereof as Exhibit A.
- (e) "Plan" shall mean the Fenway Urban Renewal Plan adopted by the Authority on November 24, 1965, and approved by the City Council of the City of Boston on December 2, 1965, and as it may be amended in accordance with the provisions therein contained, a copy of which as amended to the date hereof has been marked Exhibit A attached hereto and made a part hereof. The "term of the Plan" shall mean a period of forty years from and after December 20, 1965.
- (f) "Parcel" shall mean that portion of the Property upon which a separate improvement is to be constructed.
- (g) "Lessor" shall mean the lessor named in each proposal submitted by the Trustees pursuant to ARTICLE II, who shall be or become the owner of the parcel free of any mortgage encumbrances and shall be the lessor of the parcel to the Redeveloper.
- (h) "Lessee" shall mean the lessee named in each proposal submitted by the Trustees pursuant to ARTICLE II who shall be lessee of the parcel by virtue of a lease approved by the Authority under Section 301 from the Lessor and the successors and assigns of the Lessor and who shall join in the Agreement referred to in Section 302 covering the development of the parcel, but shall not mean any mortgagees or holders of building loan agreements.
- (i) "Design Review" shall mean the review requirements established by the Authority as set forth in the Authority publications entitled "The Design Review Process and Redeveloper's Architectural Submissions for Housing Parcels" and "The Design Review Process and Redeveloper's Architectural Submissions for Non-Housing Parcels" which publications are attached hereto as Exhibits B and C respectively.
- (j) "Improvements" shall mean the buildings and landscaping to be constructed by the Lessee pursuant to the Final Working Drawings and Specifications.



- (k) "Architect" shall mean the firm or all the firms of registered architects chosen by the Lessee approved by the Trustees and the Authority acting pursuant to the contract or contracts for services with respect to the improvements to be erected on the Parcel, a copy of which shall be deposited with the Authority and shall be in the form required by the Federal Housing Administration as hereinafter defined and referred to as FHA.
- (l) "HUD" shall mean the Department of Housing and Urban Development, or any duly authorized representative thereof.
- (m) "FHA" shall mean the Commissioner of the Federal Housing Administration of the United States of America, or any officer duly authorized to act in his behalf.
- (n) "Amendment" shall mean any amendment made pursuant to the provisions of Section 609.

## ARTICLE II

### DEVELOPMENT

#### Section 201: Submission of Proposals

The Trustees shall submit to the Authority written proposals for the comprehensive redevelopment of Parcels 2, 3, 5, 6, 7, 9, and 11 in accordance with the schedule set forth in Exhibit D attached hereto and made a part hereof as it may have been amended pursuant to Section 609 hereof. It is agreed that the Authority shall not be obligated to accept or consider any proposal received after December 22, 1969.

#### Section 202: Proposals

(a) The Authority shall promptly consider any proposal submitted by the Trustees, but shall be under no obligation to accept any proposal. The Authority shall be under no obligation to con-

sider any proposal unless it shall conform to the provisions and objectives of the Plan and the further requirements set forth in Exhibit D, and such further requirements as the Authority may, from time to time, prior to acceptance by the Authority of the proposal, reasonably determine to be necessary.

(b) A proposal shall consist of: (1) a narrative statement including the names of those persons principally interested in the Lessor and Lessee, (ii) a provision calling for the conveyance by the Trustees to the Lessor of the parcel free and clear of all mortgage encumbrances, (iii) evidence of financial capability to undertake the proposed redevelopment, (iv) a first stage design review submission, if available, (v) evidence of financing commitments, if any, (vi) any specified action required to be taken by the Authority or other public body pursuant to or in implementation of the Plan which bears a substantial relation to the feasibility of the proposal, (vii) an agreement by the Trustees not to convey the parcel to the Lessor prior to written approval by the Authority, and (viii) an agreement by the Lessor to join in the Agreement referred to in Section 302 to the extent necessary to assure completion of the construction and to subject all of the parcel to the restrictions set forth in the Agreement referred to in Section 302 of this Agreement.



### Section 203: Tentative Designation

Upon receipt of a proposal, as defined in Section 202(b) above, conforming to the provisions of said Section 202(b), the Authority will, subject to the provisions of Section 202(a) above, promptly consider a request for tentative designation of the Lessor and Lessee as redevelopers of a parcel or parcels, subject to such terms and conditions as the Authority shall deem necessary and/or desirable. Said tentative designation shall, if adopted by the Authority, only be construed as interim approval by the Authority of the redevelopers and of the proposal, for the purpose of further developing the proposal, and shall become final only upon receipt by the redevelopers of a certified copy of an Authority resolution giving final designation, pursuant to Section 204 hereof. The provisions of this Section shall not be construed as requiring affirmative Authority action on any request made pursuant to this Section.

### Section 204: Final Designation of Redeveloper

The Authority shall be conclusively deemed to have accepted and approved the proposal for an individual parcel or parcels upon receipt by the Lessor and Lessee of a certified copy of a Boston Redevelopment Authority resolution giving them final designation as redevelopers of said parcel, which final designation as redevelopers of said parcel shall contain such terms and conditions as the Authority shall deem proper and in the best interests of

the Authority. If in the opinion of the Trustees the terms and conditions stated by the Authority in its final designation materially affect the proposal, the Trustees shall have a period of thirty (30) days within which to withdraw the proposal.

Section 205: Authority's Obligation to Reimburse Redeveloper

It is understood that normal development procedures require certain preliminary disbursements, including amounts for architectural, engineering, legal, consultant, and other fees, services, studies and other normal expenditures. Nothing herein shall be construed as requiring any reimbursement by the Authority for such expenditures made by the Trustees or the proposed Lessor or Lessee, whether or not the proposal is ever accepted or considered by the Authority.

ARTICLE III

DEVELOPMENT AND TERMS THEREOF

Section 301: Participants in Development

It is intended by the Trustees and the Authority that the development of each parcel for the uses and purposes contained in the Plan will be achieved pursuant to a lease approved in writing by the Authority, entered into by and between the Lessor and the Lessee, both of whom shall be named in the proposal and approved in writing by the Authority, which approval shall not be given until the Authority had adopted a resolution tentatively designating the Lessor and Lessee as redevelopers of the parcel.



Section 302: Agreements Governing Development

No development of a parcel shall occur until an Agreement, approved by the Trustees and the Authority, has been executed between the Authority, the Lessor and the Lessee incorporating all provisions required by Federal, State, and local laws and regulations with respect to the parcel. The form of such agreement is attached hereto and made a part hereof as Exhibit E. The Trustees agree that the Authority may, from time to time, make such amendment, deletions or additions thereto as are consistent with Authority policy as of the date of execution of any Agreement executed pursuant to the provisions of this Section. Any such amendment, deletion or addition shall be made pursuant to the provisions of Section 609 below.

ARTICLE IV

RESTRICTIONS

Section 401: Equal Employment Opportunity

The Trustees agree that in connection with the performance by them of their obligations hereunder, and in connection with the redevelopment and subsequent operation of any improvements, they will conform to the provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor, to the extent that the same or any of them may apply to such activities.



## ARTICLE V

### INDEMNIFICATION

#### Section 501: Reimbursement of Authority in Respect of Certain Litigation

The Trustees shall pay all reasonable costs and expenses which may be incurred by the Authority in proceedings brought to enforce compliance with the provisions of this Agreement to the extent that the Authority prevails. It is expressly understood, however, that the mortgagee under any mortgage given by the Lessor or the Lessee shall not be liable to the Authority for any costs, expenses, judgments, decrees, or damages which may have accrued, whether or not the mortgagee shall subsequently acquire title to the parcel.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

#### Section 601: Obligations and Rights and Remedies Cumulative

(a) The respective obligations of the Authority and the Trustees pursuant to this Agreement, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

#### Section 602: Finality of Approvals

Where, pursuant to this Agreement, any document of or proposed action by the Trustees or the Lessor or Lessee is submitted to the Authority, and the Authority has in writing approved the same, such

approval shall be conclusively deemed to be a final determination by the Authority with respect to such particular document or proposed action for which such approval was given.

Section 603: How Agreement Affected by Provisions Being Held Invalid

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws.

Section 604: Parties Barred from Interest

No member, official or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement or the Trustees, the Lessor or the Lessee, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of the Authority shall be personally liable to the Trustees, the Lessor or the Lessee or any successor in interest in the event of any default or breach by the Authority or for any amount which may become due to the Trustees, the Lessor or the Lessee or to any successor or on any obligations under the terms of this Agreement.

No members of the Congress of the United States of America shall be admitted to any share or part hereof or to any benefit to arise therefrom.



Section 605: Successors and Assigns

The provisions of this Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors in interest. It is agreed that: (a) the obligations of the Trustees shall not be binding upon them individually nor upon their beneficiaries and shall be limited to the submissions of proposals to the Authority, and to carrying out the provisions of proposals, approved by the Authority, relating to the transfer to the Lessor of the title to the parcel free of mortgage encumbrances; and (b) if the Lessor consists of Trustees neither they nor their beneficiaries shall be liable individually.

Section 606: Waivers

Any right or remedy which the Authority, the Trustees, the Lessor or the Lessee may have under this Agreement or any of its provisions, may be waived in writing without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived.

Section 607: Approvals and Notices

Except as otherwise specifically provided in this Agreement, whenever under this Agreement approvals, authorizations, determinations, or waivers are required or permitted, such approvals, authorizations, determinations, satisfactions, or waivers shall be effective and valid only when given in writing signed by a duly

authorized officer of the Authority or the Trustees, the Lessor or the Lessee and sent registered or certified mail, postage prepaid, to the principal party to whom it is directed, which are as follows:

The Trustees	-	180 Massachusetts Avenue Boston, Massachusetts 02115
The Authority	-	City Hall Boston, Massachusetts 02201

The parties shall promptly notify each other of any change of their respective addresses set forth above.

Notices and other communications to the parties and to mortgagees, insurers of mortgages, and holders of building loan agreements shall be sent registered or certified mail prepaid to the last known address of the party concerned.

Section 608: Matters to be Disregarded

The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 609: Amendments

The Plan may be amended in accordance with Section 1201 thereof. This Agreement and Exhibit D may be amended only by a written document duly executed by the parties hereto evidencing consent to each amendment. Neither party shall withhold its approval of an amendment unreasonably.



The Agreement referred to in Section 302 above, may be amended by a written document duly executed by the parties hereto, evidencing their consent to such amendment. The Trustees agree that they will not withhold their consent to any amendment proposed by the Authority which shall be consistent with Authority policy concerning agreements governing the redevelopment of land.

If in the opinion of the Trustees, any amendment to the Plan, this Agreement, Exhibit D, or the Agreement referred to in Section 302 above shall materially affect a proposal, the Trustees shall have a period of thirty (30) days within which to withdraw the proposal.

WITNESS this            day of            , 1969, the parties hereto have caused this agreement and five counterparts to be signed, sealed and delivered by their duly authorized officers, respectively.

Signed, sealed and delivered in the presence of:

BOSTON REDEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Director

TRUSTEES OF CHURCH REALTY TRUST

By \_\_\_\_\_  
Its

Approved as to form:

\_\_\_\_\_  
John C. Conley, General Counsel

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston

1969

Then personally appeared before me the above-named

Director, who executed the foregoing Agreement on behalf of the Boston Redevelopment Authority and acknowledged the same to be the free act and deed of said Authority.

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Notary Public  
My commission expires

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston

1969

Then personally appeared before me the above-named

who executed the foregoing Agreement on behalf of TRUSTEES OF CHURCH REALTY TRUST and acknowledged the same to be the free act and deed of said Trust.

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Notary Public  
My commission expires



MEMORANDUM

FEBRUARY 20, 1969

10B

TO: Boston Redevelopment Authority

FROM: Hale Champion

SUBJECT: CHRISTIAN SCIENCE CHURCH COOPERATION AGREEMENT  
FENWAY URBAN RENEWAL AREA  
PROJECT NO. MASS. R-115

1298

2/20

SUMMARY: This memorandum requests the Authority to authorize the Director to execute a Cooperation Agreement with the Trustees of the Church Realty Trust, Boston, Massachusetts, pursuant to the terms of Section 403 of the Fenway Urban Renewal Plan.

Under the terms of the Fenway Urban Renewal Plan, Section 403, certain properties owned by the Christian Science Church are subject to conditional acquisition by the Authority. The condition allows the Church one year from the date of the Loan and Grant Contract (executed December 22, 1967) to submit a proposal satisfactory to the Authority for the comprehensive redevelopment of all its properties on Huntington Avenue. These properties involve Disposition Parcels 2, 3, 5, 6, 7, 9, and 11, located on Massachusetts Avenue and Huntington Avenue.

On December 12, 1968, the Authority adopted a resolution of minor modifications to the Fenway Urban Renewal Plan and extended the time for execution of the Section 403 contract until March 1, 1969.

Since the Authority extended the time for execution of the contract, attorneys for the Church and the Authority have negotiated the attached Cooperation Agreement.

It is recommended that the Authority adopt the attached vote authorizing the Director to execute the Cooperation Agreement.

VOTED: That the Director be and hereby is authorized to execute a Cooperation Agreement with the Trustees of the Church Realty Trust, Boston, Massachusetts substantially in the form attached, which contract shall be executed pursuant to and in satisfaction of the terms of Section 403 of the Fenway Urban Renewal Plan.

